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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,660	01/15/2004	John G. Fischer	JGF 02775 PTUS	5884
32233	7590	10/31/2006	EXAMINER	
STORM LLP BANK OF AMERICA PLAZA 901 MAIN STREET, SUITE 7100 DALLAS, TX 75202			AMINI, JAVID A	
			ART UNIT	PAPER NUMBER
			2628	

DATE MAILED: 10/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/758,660

Applicant(s)

FISCHER, JOHN G.

Examiner

Javid A. Amini

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

Applicant's arguments filed 9/12/2006 have been fully considered but they are not persuasive.

Applicant at middle of page 8, argues that the rejection is incorrect and improper, because the rejection is based on Examiner's broad interpretations and summary conclusions made to create allegedly "conceptually similar" elements from wholly unrelated references.

Examiner's note: The Applicant's invention uses the area of product and service testing, the prior art named the product and service testing as "measurement and ranking of investment portfolio management ..", the Applicant's invention uses displaying of performance data, and the prior art displays the performance data as "identified best investor". That is why the Examiner used the terminology of the "conceptually similar" in previous office action. The Examiner is still believed the scope of the claimed invention conceptually similar to what the prior arts teach, because the name of the game is the claim, See *In re Hiniker Co.*, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998), and the goal of claim analysis is to identify the boundaries of the protection sought by the Applicant and to understand how the claims relate to and define what the applicant has indicated is the invention, see MPEP 2106 [R-3] [II](C). At the same paragraph, the MPEP discloses that limitations appearing in the specification but not recited in the claim are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily).

Applicant on page 6 argues that the cited references do not teach, the essential of the claimed invention, and similarly on page 7 argues that the cited reference teaches away from the present invention, and provides no motivation to arrive at the limitations of the claimed invention. From claim 1: ...solving for a contest value between the first product value and the second product value; selecting an animated contest file by relationship to the contest value; Examiner's reply: The present invention relates to the area of data display formats and more particularly to the area of product and service testing and display of performance data, see specification at paragraph 0003. The cited reference Kams' invention relate to an Internet-based business system and management programs therefor, and more particularly to financial investment management characterized by a unique system of attracting and identifying the best investors, including but not limited to offering and managing performance-based investment competitions based on model investment portfolios, creating actual portfolios for the identified best investor, creating and operating actual mutual funds based on the identified best investors as fund managers, and providing a full suite of related subscriber and investor services associated therewith as a fund supermarket, see Kam at 0002.

On page 8, Applicant argues the examiner's conclusion of obviousness is based upon improper hindsight reasoning.

Examiner's reply: Examiner takes only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971), see MPEP 7.37.03.

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Applicant on page 9 argues that the second reference is wholly unrelated to the field of art of comparing products and services.

Examiner's reply: Guheen in fig. 15 step 1504 outputting a comparison between different products and services. Applicant achieves the contest value by dividing the lower product value by the higher product value (see page 9 paragraph 0034), but these limitations are appeared in the specification not recited in the claimed invention.

Applicant on pages 11-12 provides remarks regarding the interview summary.

Examiner's reply: Applicant does not explain or provide a remark or suggest to the question in the interview summary. The question is: does the animated contest include different interval of time? Examiner refers to page 7 paragraph 0026 in fig. 2 that is an example of a graphical image display of the animated representatives of the type that might be used to represent two products whose test performance data was to be compared. The diagram represents the beginning of a combat sequence.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 rejected under 35 U.S.C. 103(a) as being unpatentable over Kam et al. US 2001/0042037 A1 (hereinafter refers as Kam), and further in view of Guheen et al. US 6,615,166 B1 (hereinafter refers as Guheen).

Claim 1,

Examiner's interpretation of the claim invention in respect to claim 1: the comparison or the differences between two or more products, e.g. first data, second data and ..., can be display by graphical objects, e.g. animated contest, an icon, text message, or etc.

Kam on page 2 at 0017 teaches three steps, as follows:

I. Offering and managing performance-based investment ranking and/or competitions based on model investment portfolios (virtual portfolios), and identifying "Best Investors," in a first phase;

Examiner's interpretation: conceptually is similar to the claim language: "determining a first/second product value representing a first/second product's".

Examiner uses Kam's invention that is related to financial investment management identifying Best Investors (herein "BI's"). Best investor means one who invests money and makes more money, obviously investing on products, e.g., the purchased price one or more shares last year (it may refer to as first product) compares (differences, ratio, etc.) to selling price one or more shares this year (it may refer to as second product), if the ratio is more than 1 the results considered as BI. See Kam at paragraph 0078.

II. Operation of actual portfolios by members, including new ones created by the identified Best Investors for themselves, in a second phase; Examiner's interpretation: conceptually is similar to the claim language: "solving for a contest value between the first product value and the second product value".

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III. Creating and operating actual mutual funds based on the identified Best Investors as fund managers in a third phase. A full suite of related subscriber and investor services associated therewith is facilitated and provided in all phases, including a fund supermarket in the third, and/or second phase. Examiner's interpretation: conceptually is similar to the claim language: "selecting an animated contest file by relationship to the contest value; and providing a display means for displaying the animated contest". Kam does not explicitly specify displaying the animated contest, but at paragraph 0123 teaches the notification can be text or icon messages. However, the second reference Guheen at col. 32, lines 41-49 teaches Java, which developers can create robust User Interface (UI) components. Custom "widgets" (e.g., real-time stock tickers, animated icons, etc.) can be created, and client-side performance is improved. Unlike HTML, Java supports the notion of client-side validation, offloading appropriate processing onto the client for improved performance. Dynamic, real-time Web pages can be created. Using the above-mentioned custom UI components, dynamic Web pages can also be created. Therefore the deficiency of the first reference may be vanishing by incorporating the second reference of graphical user interfaces using Java.³

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute applicant's described structure, by incorporating Guheen's graphical tools (i.e. software) into Kam's invention who teaches at paragraph 0034 a variety of program modules can be stored in the memory, including OS, server system programs, HSM (Hierarchical Storage Management) system programs, application programs, other programs modules and data. In a networked environment, the program modules may be distributed among several computing devices coupled to the network, and used as needed. When a program is executed, the program

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is at least partially loaded into the computer memory, and contain instructions for implementing the operational, computational, archival, sorting, screening, classification, formatting, rendering, printing and communication functions and processes described herein. The advantages would be of the Internet-based financial services market business method and computerized system of the invention include: facilitation of periodic, preferably daily, feedback of one or more significant and appropriate financial performance metric(s) or indicator(s), including the NAV of identified stocks and funds, that permit investors to answer their prime questions, especially in a volatile market, of: "How am I doing?" and "How can I do better?" As used herein the term NAV can refer to the asset value of either a real market fund or an investor's model portfolio, see Kam at 0019.

Claim 2,

Kam at 0065 teaches a mini chart on Stock price and trading range over time of particular stocks, including ticker symbol.

Claim 3,

Kam in fig. 2 and at paragraph 0078 teaches the claim limitations.

Claim 4,

Kam in fig. 2 number 58 teaches the claim limitation.

Claim 5,

It 's obvious to compare two numbers by dividing to each other or taking a ratio of the two numbers. Kam in fig. 7 illustrates the Y axis is the Earnings Growth and the X axis is the Sales Growth. That represents the performance of that particular company.

Claims 6-7,

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Guheen at col. 82 lines 2-5 teaches that statistical Process Control tools are used to analyze the results obtained with the measurement tools. These display trends that can be used as the basis for process improvement or, in other cases, product rework. Also at col. 83 lines 4-12 teaches an engagement teams frequently require Configuration Management tools to support the testing process. Large development efforts may have multiple releases of an application in the development pipeline (development, unit test, integration test, user acceptance test, and production). Additionally, some environments have multiple applications that share common components. Multiple versions of common components may be required depending upon the application being tested.

Claim 8,

Guheen at cols. 274 and 275 lines 64-67; 1-7, respectively, teaches the template concept may be used to provide individual, overall frameworks for organizations and individuals that create, modify, market, distribute, consume, and/or otherwise use movies, audio recordings and live performances, magazines, telephony based retail sales, catalogs, computer software, information data bases, multimedia, commercial communications, advertisements, market surveys, infomercials, games, CAD/CAM services for numerically controlled machines, and the like.

Claim 9,

Kam in fig. 6D illustrates the claim limitations.

Claims 10-13,

The rejection of claim 1 is applicable to the rejection of claims 10-13. Guheen at col. 32, lines 41-49 teaches Java, which developers can create robust User Interface (UI) components. Custom "widgets" (e.g., real-time stock tickers, animated icons, etc.) can be created, and client-side

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performance is improved. Unlike HTML, Java supports the notion of client-side validation, offloading appropriate processing onto the client for improved performance. Dynamic, real-time Web pages can be created. Using the above-mentioned custom UI components, dynamic Web pages can also be created. A person skill in the art would have been motivated using animated characters to represent a product in order to obtain the attention of a user, and each product may be assigned to different character that a user may identify graphically the particular product quickly.

Examiner's note: Kam uses real-time stock tickers, and animated icons that means the stock tickers are associated with one or more products or the animated icon is obviously associated to a file data.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javid A. Amini whose telephone number is 571-272-7654. The examiner can normally be reached on 8-4pm.

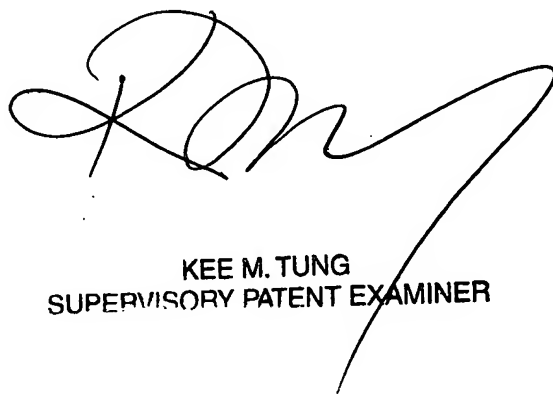
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kee Tung can be reached on 571-272-7794. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Art Unit 2628

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KEE M. TUNG
SUPERVISORY PATENT EXAMINER